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9 YELP INC.

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11 **UNITED STATES DISTRICT COURT**

12 **NORTHERN DISTRICT OF CALIFORNIA**

13 DR. MUHAMMAD MIRZA and
14 ALLIED MEDICAL AND
15 DIAGNOSTIC SERVICES, LLC,

16 Subpoenaing Parties,

17 v.

18 YELP INC.,

19 Subpoenaed Party.

Case No. 3:19-mc-80146-SK

**DECLARATION OF NICOLETTE MARTZ
IN SUPPORT OF SUBPOENAED PARTY
YELP INC.'S OPPOSITION TO MOTION TO
ENFORCE COMPLIANCE WITH THIRD-
PARTY SUBPOENA**

Hearing Date: [To be determined]

Hearing Time: [To be determined]

Courtroom: C

Judge: Hon. Sallie Kim

DECLARATION OF NICOLETTE MARTZ

1. My title is Senior Product Counsel at Nonparty Yelp Inc. (“Yelp”).

2. The yelp.com website, and related mobile applications (collectively, the “Yelp Site”) provide a forum in which users, free of charge, can read and write reviews of local businesses.

3. The Yelp Site’s Terms of Service dated November 27, 2012 were applicable as of the date of the reviews of Plaintiff Dr. Muhammad Mirza that are at issue in this matter (the “Reviews”). A true and correct copy of the Yelp Site’s Terms of Service dated November 27, 2012 is attached hereto as Exhibit A.

4. Further, all versions of the Yelp Site’s Privacy Policy applicable at the time the Reviews were posted made clear that users of the Yelp Site may author reviews under pseudonyms, and include the statement “[y]ou can reduce the risk of being personally identified by using the Service pseudonymously, though doing so could detract from the credibility of your contributions to the Service.” A true and correct copy of the Yelp Site’s current Privacy Policy is attached hereto as Exhibit B.

5. As of the date of this declaration, there are 86 active recommended reviews and 95 active not recommended reviews of Mirza’s medical practice, Botox Juvederm Doctor, on the Yelp Site, which is publicly available at <https://www.yelp.com/biz/botox-juvederm-doctor-new-york>. A true and correct copy of the first page of the Yelp Site listing of Botox Juvederm Doctor containing reviews of Mirza’s medical practice is attached hereto as Exhibit C. As of the date of this declaration, there are 68 active recommended reviews and 82 active not recommended reviews of Mirza’s medical practice, Mirza Aesthetics, on the Yelp Site, which is publicly available at <https://www.yelp.com/biz/mirza-aesthetics-new-york-8>. A true and correct copy of the first page of the Yelp Site listing of Mirza Aesthetics containing reviews of Mirza’s medical practice is attached hereto as Exhibit D.

6. The anonymous defendants at issue in this motion (the “Does”) authored the Reviews between November 2017 and June 2018. The Does posted the Reviews under

1 usernames, or screen names, such as “Doris B.,” “Tina K.,” and “Augustine S.” A true and
2 correct copy of all of the Reviews authored by the Does is attached hereto as Exhibit E.

3 7. Attached hereto as Exhibit F is a true and correct copy of an email from me to
4 David D. Lin, Esq., counsel for Plaintiffs in the above-referenced matter, dated November 26,
5 2018.

6 8. Regarding Plaintiffs’ action against the Does in the United States District Court for
7 the Southern District of New York (the “New York Action”), Yelp was not aware of and did not
8 participate in any proceedings in the New York Action concerning Plaintiffs’ application to serve
9 a subpoena on Yelp prior to the Fed. R. Civ. P. 26(f) conference. Moreover, Yelp has not
10 participated in the New York Action in any manner.

11 9. A key rationale for Yelp’s goal of maintaining its users’ anonymity is that, if the
12 businesses reviewed by Yelp’s users could easily learn the users’ identities, users would become
13 reluctant to voice honest criticisms of those businesses, for fear of the very sort of retaliatory
14 litigation Plaintiffs are engaged in.

15 10. I declare under penalty of perjury that the foregoing is true and correct.

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17 Dated: June 12, 2019

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NICOLETTE MARTZ